

Application No. 09/975,047

RXSD 1020-1

REMARKS

In the Final Official Action mailed 28 December 2005, the Examiner reviewed claims 1-24. The Examiner rejected claims 1-3, 5-13 and 15-24 under 35 U.S.C. §102(e); has rejected claims 4 and 14 under 35 U.S.C. §103(a); and has provisionally rejected claims 1, 3 and 4 for double patenting.

Applicant proposes to amend claims 1, 5-9 and 12, and to cancel claims 2 and 19-24. Claims 1 and 3-18 will remain pending upon entry of the amendment.

The rejections are respectfully traversed below after summary of an Examiner Interview.

Examiner Interview

The Examiner held a telephonic interview with the undersigned attorney on 7 March 2006. In the interview, claim 1 and Horn were discussed. Applicant pointed out that the Examiner has not identified and Horn does not teach a "downloaded computer program" that generates an audio stream, as required by the claims. The Examiner took the position that the claims were too broad with respect to this point, and that the "broadest reasonable interpretation" of "generating an audio stream" reads on any program that might be involved in sound generation, such as an operating system update for compatibility. The Examiner identified column 4, lines 27-30 of Horn as suggesting download of such a program. No agreement was reached.

Rejection of Claims 1-3, 5-13 and 15-24 under 35 U.S.C. §102(e)

Claims 1-3, 5-13 and 15-24 are rejected under 35 U.S.C. §102(e) as being anticipated by Horn U.S. Patent 6,379,314.

Applicant proposes to amend independent claims 1, 12 and 19 to incorporate the definition of "audio stream" from the specification, and to amend claims 1 and 12 to add the subject matter of claim 2, and to emphasize the antecedent basis for the computer program as the "downloaded computer program." Claim 2 is canceled. No new matter is added. No new issue is presented by the proposed claims.

Claims 19-24 are canceled.

As to claim 1, the Examiner takes the position that claim 1 reads on Horn. However, in the Official Action, no "downloaded computer program" is identified in Horn that generates an audio stream as recited in the clarified claims. Furthermore, the Examiner takes the position that

Application No. 09/975,047

RXSD 1020-1

the table of values (TOV) of Horn corresponds to the audio parameter of claim 2. However, there is no indication in Horn that the TOV is part of a downloaded program, as required by the claims. Accordingly, the Examiner's *prima facie* case is incomplete.

Claims 3 and 5-11 depend from claim 1 and are patentable for at least the same reasons.

Applicant proposes a similar amendment to claim 12, from which claims 13 and 15-18 depend. Thus, claims 12, 13 and 15-18 are believed allowable for the reasons discussed above.

Accordingly, entry of the amendment and reconsideration of the rejection of claims 1, 3, 5-13 and 15-18 as amended is respectfully requested.

Rejection of Claims 4 and 14 under 35 U.S.C. §103(a)

Claims 4 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Horn U.S. Patent 6,379,314 in view of Admitted Prior Art.

Claims 4 and 14 depend from claims 1 and 12, respectively, and are believed patentable for at least the same reasons.

Accordingly, reconsideration of the rejection of claims 4 and 14 is respectfully requested.

Provisional Rejection of Claims 1, 3 and 4 for Double Patenting

The Examiner has provisionally rejected claims 1, 3 and 4 under the judicially created doctrine of obviousness-type double patenting over claims 1-3 of copending Application No. 09/996,161 in view of Horn (U.S. 6,379,314). Applicant respectfully requests reconsideration. The present application has the earliest filing date. Accordingly, the Examiner should withdraw the provisional rejection in the present case. See, MPEP 804. I. B. 1. Furthermore, on the merits, the Examiner is mistaken that Horn teaches generating an audio stream as claimed herein using a downloaded computer program, as discussed in detail above.

Accordingly, withdrawal of the provisional rejection of claims 1, 3 and 4 as amended is respectfully requested.

Application No. 09/975,047

RXSD 1020-1

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1020-1).

Respectfully submitted,

Dated:

14 Mar 06



Mark A. Haynes, Reg. No. 30,846

HAYNES BEFFEL & WOLFELD LLP
P.O. Box 366
Half Moon Bay, CA 94019
(650) 712-0340 phone
(650) 712-0263 fax